

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0272

**Individual Income Tax
For Tax Periods 1994-1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax—Exemption Certificates/Resale Certificates

Authority: IC 6-2.5-5-4; IC 6-5-8-8; 45 IAC 2.2-8-12

Taxpayer protests assessment of sales tax on items sold in which the purchaser provided exemption or resale certificates.

II. Tax Administration—Projection Method

Authority: IC 6-8.1-5-1

Taxpayer protests the test period selected by the auditor.

III. Tax Administration—Penalty and Interest

Authority: IC 6-8.1-10-1

Taxpayer protests imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer sells industrial parts, tools and supplies. The product line ranges from general housekeeping items to general maintenance supplies to repair and maintenance parts for manufacturing equipment. A separate division sells industrial metals. The Indiana Department of Revenue ("Department") conducted a Sales tax audit for the years of 1994-96, and issued assessments on items on which no Indiana sales tax had been collected or remitted. Taxpayer protests the assessments.

I. Sales Tax—Exemption Certificates/Resale Certificates

DISCUSSION

Taxpayer protests the assessment of sales tax on items it believes are exempt as they are sold either to not-for-profit organizations or to manufacturers to be incorporated into other products or directly used in the manufacturing process. Taxpayer refers to IC 6-2.5-5-4, which states:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for his direct use in the direct production of the machinery, tools, or equipment described in section 2 or 3 of this chapter.

Taxpayer believes that its acceptance of resale certificates or exemption certificates meets the “good faith” criteria described by IC 6-2.5-8-8(a), which states:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

Taxpayer asserts that since the exemption or resale certificates were signed and maintained on file by taxpayer, it is relieved from any further liability for sales and use tax.

During the audit, taxpayer was unable to provide several exemption certificates. The auditor was therefore unable to verify that those sales were eligible to be exempt from the sales tax. The relevant regulation is 45 IAC 2.2-8-12(b), which states:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect sales tax or prove exempt use by the buyer.

Since the taxpayer was unable to produce exemption certificates or other evidence that the sales in question were exempt from sales tax, the Department assessed sales tax on those items.

Taxpayer stated during hearing that it had located exemption certificates for some of its customers, and also stated that it could not find exemption certificates for three of its

customers, conceding that it owed taxes on sales to those customers. Taxpayer submitted copies of three exemption certificates to support its position. Two of these are for the same customer. One of the forms for that customer is from Indiana and one is from another state. Since taxpayer did provide an Indiana exemption certificate, the out-of-state certificate is moot. The third form is also from the other state. As previously established, IC 6-5-8-8 provides that exemption certificates must be on forms and in the manner prescribed by the department. There is no provision for an exemption based on an out of state certificate.

FINDING

Taxpayer's protest is sustained to the extent the Indiana exemption certificate provided covers the audit period, and denied with regard to the out of state certificates.

II. Tax Administration—Projection Method

DISCUSSION

Taxpayer argues that the projection method used by the Department is fundamentally flawed and cannot be used to accurately and fairly assess the sales and use taxes for the period of the audit. Audit will review the projection methodology to determine if the exceptions in the sample periods are applied in a manner that fairly represents the errors in the populations. The exceptions of the sample should be applied to the base from which the sample is drawn.

FINDING

Taxpayer's protest is sustained pending review by the Audit division.

III. Tax Administration—Penalty and Interest

DISCUSSION

Taxpayer protests any penalties and interest associated with these assessments on the grounds that it was resisting payment of taxes which it asserts were exempt transactions, and that it relied in good faith on the advice of counsel. IC 6-8.1-10-1(a) states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of the tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon determination by the department, the person is subject to interest on the nonpayment.

IC 6-8.1-10-1(e) explains that the department may not waive the interest imposed under this section. Therefore, the interest may not be waived. The Department did not impose penalties on these assessments.

FINDING

Taxpayer's protest is denied.

WL/PE/MR 002508